IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 05.04.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.828 of 1995

Sri Kanchi Kamakoti Madam,
by its Sri Karyam and Agent
... Appellant/Plaintiff

Vs.

1. The State of Tamil Nadu,
rep.by the Collector,
Nagai Quid-E-Millath,
District, Nagapattinam,
Tanjore District.

2. The Block Development Officer,
Nannilam, Nannilam Taluk,
Tajore District.

3. The President,
Kollumangudi Panchayat Union,
Kollumangudi Village,
Nannilam Taluk, Tanjore District. ... Respondents/Defendants

PRAYER: Second Appeal against the Judgment and decree of the Dsitrict Court, Nagapattinam dated 1.2.95 in Appeal Suit No. 109 of 1993 preferred against the decree of the Court of the Subordinate Judge, Mayiladuthurai dated 30.9.1992 in O.s.No. 106 of 1990.

For Appellants : Mr.Subramanian for
Mr.V.Krishnan
For Respondents : Mr.R.Revathi, G.A. (CS) for R1 & R3
Mr.NSubbarayalu for R2

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J U D G M E N T

The plaintiff in the suit is the appellant. The suit filed by the plaintiff for recovery of Rs.15,550/- with interest on the basis that the suit properties situated in Nannilam Taluk, Pillur Village in Survey No.175/2 to the extent of 2 cents of Nanja lands and in Kollumangudi Village in Survey No.276/1 to the extent of 19 cents in Nanja Survey No.276/4 to the extent of 22 cents to the total extent of

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43 cents which belong to the plaintiff Mutt and according to the plaintiff the third respondent has encroached the same in the year 1980 for putting up the road without following the land acquisition proceedings and in view of the same after giving notice under Section 80 of the Code of Civil Procedure, the suit for recovery claiming compensation is filed. The claim is stated to have been made at the rate of Rs.350 per cent for 43 cents and at the rate of Rs.50 per cent towards damages.

2. The defendants have filed the written statement. One of the main grounds taken by the defendants is that the third defendant was not properly explained,that there is no Kollumangudi Village Panchayat. The said Kollumangudi Village belongs to Pillur Panchayat and the Pillur Panchayat has not been made as a party. The defendants have also denied the allegation of encroachment stating that a part of the suit property belong to HR & CE Department and the road in existence from time immemorial. It is the further case of the defendants that the price cannot be more than Rs.60 per cent. The Trial Court has decreed the suit in favour of the plaintiff for an amount of Rs.6,550/- along with 6% interest. It was as against the said judgement and decree of the Trial Court the defendants have filed the appeal and the First Appellate Court while allowing the appeal has set aside the judgement and decree of the Trial Court. It is as against the said judgement of the First Appellate Court the present Second Appeal is filed by the plaintiff.

3. While admitting the Second Appeal this Court has framed the following substantial question of law:

> "Whether the Lower Appellate Court is right in negativing the plaintiff's claim in the absence of the execution of the sale deed in respect of the property involved?"

4. A reference to the judgement of the Trial Court shows that in fact the learned Trial Judge on appreciation of the documents filed on behalf of the plaintiff marked as Exs.A.1 to A.6 which are adangal and chitta apart from the sketch in respect of the properties claimed by the plaintiffs which are public in nature, has definitely come to the conclusion that the plaintiff Mutt is the owner of 43 cents of land in Pillur Village comprised in Survey No.275/2 and Kollumangudi Village comprised in Survey Nos.276/1 and 276/4 and also based on the evidence of P.W.1. The learned Trial Judge has also referred to Ex.A.14 in which the defendants themselves have admitted that 2 cents of land in the Pillur Village belonged to the Mutt has been taken for the purpose of laying road to reach the burial ground. A proposal has been sent for payment of compensation along with chitta, adangal and sketch and in view of the said factual position the Trial Court has come to a conclusion that the plaintiff Mutt was entitled as the owner of 43 cents as stated in the plaint.

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5. On the other hand, the learned First Appellate Judge has not to chosen consider any one of the said documents and has rejected the claim of the plaintiff in respect of 43 cents saying that the plaintiff has not chosen to examine any of the occupants who are the tenant under the plaintiffs and without making the occupants as a parties in the suit.

6. It is also strange to note that the learned First Appellate Judge has held that for the purpose of claiming compensation the plaintiff must prove that the defendants have attempted to execute sale deed in favour of third parties which are not understandable. The operative portion of the learned First Appellate Judge order is as follows:

> "8. இந்த வழக்கினை எந்த அடிப்படையில் வாதி கீழமை நீதிமன்றத்தில் தாக்கல் செய்தார் என்பதற்கு தக்க காரணங்கள் இல்லை. (ளிநஉகைநைன சுநடநைக ருஉவ) குறித்த வகை நிவாரணம் கோருகின்ற சட்டத்தில் எந்த பிரிவின்படி மேற்படி பிரதிவாதிகளிடம் விலை நிவாரணம் கோருகிறார் என்பதையும் தெரிவிக்கவில்லை. அவ்வாறு விலை நிவாரணம் கோரப்பட்டால் மேற்படி நிலத்தினை பிரதிவாதிகள் எவர் ஒருவருக்காவது வாதி தரப்பில் விற்பனை ஆவணம் எழுதிக் கொடுக்க முன் வந்திருக்க வேண்டும். அவ்வாறு விற்பனை ஆவணம் எழுதிக்கொடுக்காமலேயே விலை நிர்ணயம் செய்து இழப்பீடு தொகையை மட்டில் வாதி வைத்திருக்கின்ற கோரிக்கையும் ஏற்புடையதல்ல, "

7. Even if the said word is taken to mean that the plaintiff will be entitled for compensation only if he is willing to execute sale deed in favour of the defendants, since the learned Appellate Judge has ultimately come to a conclusion that the plaintiff who has chosen to state in the appellate stage that they are ready to execute sale deed have not chosen to state the same in the pleadings, I do not think that the reasoning of the learned First Appellate Judge is proper. What is claimed by the plaintiff is that the property belonging to the plaintiff Mutt has been encroached upon by the defendant especially the third defendant and without following the legal process regarding land acquisition and without paying compensation and it is only in respect of that conduct stating that it unauthorized and against law, the suit for compensation was filed. In such circumstances, it is not understandable as to how the plaintiff should make a pleading that he is willing to execute a sale deed in favour of the third defendant. This is more so, when admittedly, the defendants are in possession of the property which are being used as public road and when once the Trial Court on appreciation of documents Exs.A1 to A6 has correctly come to a conclusion that the plaintiff Mutt is the owner of 43 cents of land, there is no question of plaintiff making any offer in the pleading to execute a sale deed in favour of the third defendant which is possible only after the compensation is either fixed or paid.

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8. As far as the non-joinder of parties, the same was not an issue at all. In respect of the period of limitation, since the suit is filed on behalf of Mutt which is covered under H.R.& C.E. Act and therefore, under Section 109 of the H.R.& C.E. Act, there is no limitation. Moreover, the suit filed by the plaintiff is not for a specific performance and it is a money suit for damages. As correctly pointed out by the learned counsel for the appellant Mr.Subramanian, after the amendment under Act 28 of 2003, Section 109 of the H.R.& C.E. Act exempts application of limitation Act in respect of possession of immovable property belonging to any religious institution or for possession of any interest in such property, in contrast to the provision of 109 before the amendment wherein a bar was been imposed on a person in claiming adverse possession on question of limitation, if property did not vest in him prior to 30.09.1951. As far as the point relating to the improper mentioning of the third defendant, inasmuch as it is admitted that both the Villages Kollumangudi and Pillur were originally the same Village panchayat and it was divided only after 1992 and even otherwise they were under the control of the second defendant and in view of the said facts, I do not think that the defense raised by the defendants in that regard is sustainable.

9. In view of the above said fact and looking into any angle there is a patent error committed by the learned First Appellate Judge and therefore, the said judgement and decree suffers from illegality and the substantial question of law as framed is answered in favour of the appellant, with the result the judgement and decree of the First Appellate Court in A.S.No.109 of 1993 on the file of the District Court Nagapattinam is set aside and the judgement and decree of the Trial Court dated 30.09.1992 passed in O.S.No.106 of 1990 on the file of the Sub Court Myladurai is confirmed and the Second Appeal stands allowed without costs.

nbj

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The District Judge, Nagapattinam,

2. The Subordinate Judge, Mayiladuthurai.

3. The Record Keeper, V.R. Section,
High Court, Chennai.

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+ One cc to the Spl Govt Pleader sR 21883
+ One cc to Ms. R. Revathy, Govt Advocate sR 21817
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Order in
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